

THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

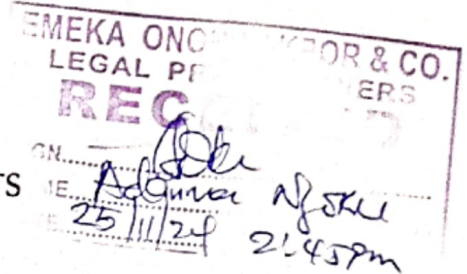
APPEAL NO:
SUIT NO. ID/7480GCM/2023

BETWEEN

1. MERIDIAN PARK ESTATE APPELLANT

AND

1. HON. ABAYOMI ODE
2. MRS. HENRIETTA ODE RESPONDENTS



NOTICE OF APPEAL

1. TAKE NOTICE that the Appellant being dissatisfied with the DECISION of the High Court of Lagos State holden at the Ikeja Judicial Division, Ikeja, Lagos State, which is more particularly stated in paragraph 2 hereof as contained in the final judgment of the Honourable Justice Y. R. PINHEIRO. dated the 9th October, 2024, doth HEREBY APPEAL to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4

AND the Appellant further state that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5

2. PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF:

The whole decision

3. GROUND OF APPEAL

GROUND ONE

The learned trial judge erred in law and in fact when the Court held that by virtue of Order 7 rule 1(2) of the High Court of Lagos State (Civil Procedure) Rule 2019 which entitles the Court to treat a process filed out of time as an irregularity, the Respondents' further affidavit and reply address which were filed out of the time prescribed by the rules of the Court are competent and could be relied upon by the Court when the Court never made any order to regularize the said processes.

PARTICULARS

- (a) The further affidavit and reply on point of law filed by the Respondents' counsel were filed out of time.

- (b) The Appellant's counsel prior to the hearing of the originating summons raised the issue of the irregularity in the Respondents' counsel processes, however, the Respondents' counsel chose to proceed with the hearing of originating summons.
- (c) During the hearing of the Originating summons, the Appellant's counsel raised the issue of the irregularity as to time in the processes filed by the Respondents' counsel.
- (d) The trial Court found that the further affidavit and reply on point of law filed by the Respondents' counsel were actually filed out of time. The Court never made any order to regularize same.
- (e) By its effect, Order 7 rule 1(2) of the High Court of Lagos State (Civil Procedure) Rule 2019, which declares irregularity as to form, time and place in a process as mere irregularity, did not make any such affected process become regular rather, it establishes that any affected process could be subsequently regularized by the order of a competent Court unlike where a process is declared a nullity and cannot be made competent or regularized by a subsequent order of the Court.
- (f) The further affidavit and reply on point of law filed by the Respondents' counsel having been filed out of time and was never regularized by an order of the Court is incompetent and the trial Court was wrong to place reliance on it.

GROUND TWO

The learned trial judge erred both in law and in fact when the Court failed in its judgment to address issues raised by the Appellant in its defence.

PARTICULARS

- (a) The issues between parties are more than just to determine whether there was full payment of purchase sum or not by the Respondents to the Appellant but the trial Court judgment only addressed this issue.
- (b) The Appellant stated in its defence that the property subscribed for by the Respondent was never built and thus specific performance would be impossible.
- (c) The issue of unrealistic specific performance and non-inclusion of an alternative prayer for damages in the reliefs of the Respondents was never addressed in the trial Court's judgment.
- (d) The trial Court never considered the Sale Agreement executed between parties and the implication of its terms on the facts of this matter.

- (e) Despite that the Appellant raised the issue in its defense, the trial Court never considered the remedies entitled by the Respondents in the Sale Agreement vis a vis the facts of this suit.

GROUND THREE

The judgment of the trial Court is against the weight of evidence.

PARTICULARS

- (a) The evidence before the Court is that the property subscribed for by the Respondents do not exist.
- (b) Parties executed a sale agreement wherein parties agree to remedies that would be available to either side in the circumstances raised in this suit yet the Court never gave the parties' agreement any consideration before reaching its final decision.
- (c) The decision of the trial Court is perverse.

4. RELIEF SOUGHT FROM THE COURT OF APPEAL.

- a) An order setting aside the decision of the lower court delivered on 9th October, 2024.
- b) An order granting the prayers sought for by the Appellant at the lower court.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

The Appellant

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The 1st and 2nd Respondents

c/o their counsel;

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Dated this 18th day of November, 2024



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FOR SERVICE ON:

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